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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,697	12/12/2000	Noel Lee	P1230	6750
7590 06/14/2005			EXAMINER	
LaRIVIERE, GRUBMAN & PAYNE, LLP			DEBERADINIS, ROBERT L	
P.O. BOX 3140			ART UNIT	
MONTEREY,, CA 93942			2836	

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/735,697

Applicant(s)

LEE, NOEL

Examiner

Robert DeBeradinis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 49-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 49-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The reply filed 3/14/05 consists of a status of claims, summary of the prosecution history, summary of the invention and remarks related to rejection of claims.

#### ***Response to Arguments***

Applicant's arguments filed 3/14/05 have been fully considered but they are not persuasive.

On page 14 lines 10-20 it is argued that none of the references teach solid color-coding of substantially identical outlets. This is not relevant, the claims, e.g. 49, require "a housing having a plurality of substantially identical AC power distribution outlets... said housing having a plurality of colored areas..." this argument is not supported by the claim language. Please note Dwight discloses a housing having colored areas; which meet this claim limitation. It is additionally argued that the outlets are substantially identical. Dwight also discloses this feature.

On page 19 lines 35 plus it is argued that the colored area proximate to each outlet is not for selectively identifying each outlet of said power strip and providing color indicia corresponding to the colors of said colored areas for identifying devices assigned to each colored area. Please note BARNA teaches a system includes a color coded alignment strip that has a surface of colors arranged in ordered positions on the strip. The colors of the surface correspond to color coded cables (abstract).

On page 24 lines 24 plus it is argued that DWIGHT merely comprises thin colored rings disposed at a notable radius away from the outlets; BARNA merely

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teaches the use of a hardwired pattern template applied to a credit card terminal and only serves to illustrate the problem with visual identification; LINER merely teaches an oversized outlet and that in fact the references teach away from the present invention.

This argument is not relevant. DWIGHT teaches a housing having a plurality of substantially identical AC power distribution outlets for connecting AC electrical power to a plurality of devices, said housing having a plurality of colored areas. BARNS teaches color coding cables having electrical connection ports that are to receive the color coded cables of the corresponding colors aligned with the electrical connection ports (abstract). LINER teaches an oversize outlet in that it is spaced from the other outlets to allow an over size plug, such as are part of a voltage reducing transformer (column 1, lines 33-35).

The Applicant requests the Examiner to consider the affidavits presented by Noel Lee, Karen Johnson, and Albert Mehrabian.

Regarding the Noel Lee 131 affidavit. Paragraphs 1, 5, and 7 are the only paragraphs of the affidavit that support applicant's attempt to establish an earlier date of invention. MPEP 715.07 states that "the essential thing to be shown under 37 CFR 1.131 is priority of invention and this may be done by any satisfactory evidence of the fact." Further, "general allegation that the invention was completed prior to the date of the reference is not sufficient". MPEP 715.07(III) states:

" The affidavit or declaration must state FACTS and produce such documentary evidence and exhibits in support thereof as are available to show conception and completion of invention in this country or in a NAFTA or a WTO member country (MPEP

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715.07(c)), at least the conception being at a date prior to the effective date of the reference. Where there has not been reduction to practice prior to the date of the reference, the applicant or patent owner must also show diligence in the completion of his or her invention from a time just prior to the date of reference continuously up to the date of an actual reduction to practice or up to the date of filing his or her application."

In paragraph 7 declarant states conception took place in 1993 and reduction to practice occurred in 1997. No evidence is provided to support these allegations. Diligence is not addressed at all in this affidavit. In fact the only evidence supplied is a figure with no date in support of either conception or reduction to practice. Since no evidence regarding the date of conception or the demonstration of diligence has been provided, this declaration is insufficient to establish a prior date of invention to the Dwight reference. It is noted that the 131 affidavit was submitted to address a different reference from Monster's competitor Acco Brands Inc. The issues are the same with respect to the Dwight reference, also assigned to Acco.

In paragraph 6 declarant states Mr. David Pitcher was an employee of Monster and later moved to Acco. The declarant asserts that Mr. Pitcher took proprietary information from Monster and disclosed it in Acco. Such an attempt to prove derivation is treatable under CFR 132. Since the currently applied reference to Dwight does not name Mr. Pitcher, this assertion is not deemed relevant to the currently applied rejection.

Regarding Noel Lee's affidavit under 37CFR 1.132 demonstrating commercial success. The MPEP states

**I. >< NEXUS BETWEEN CLAIMED INVENTION AND EVIDENCE OF COMMERCIAL SUCCESS REQUIRED**

An applicant who is asserting commercial success to support its contention of nonobviousness bears the burden of proof of establishing a nexus between the claimed invention and evidence of commercial success.

The Federal Circuit has acknowledged that applicant bears the burden of establishing nexus, stating:

In the *ex parte* process of examining a patent application, however, the PTO lacks the means or resources to gather evidence which supports or refutes the applicant's assertion that the sale constitute commercial success. *C.f. Ex parte Remark*, 15 USPQ2d 1498, 1503 (Bd. Pat. App. & Int. 1990)(evidentiary routine of shifting burdens in civil proceedings inappropriate in *ex parte* prosecution proceedings because examiner has no available means for adducing evidence). Consequently, the PTO must rely upon the applicant to provide hard evidence of commercial success.

Noel Lee's affidavit that states commercial success was demonstrated by this product improvement is not convincing. It fails to identify what the unit sales in similar markets were before this produce line was introduced, whether a product line was replaced with this newer product line, what alternatives were available to this product line and how introduction of this new line impacted the alternatives sales. Without this information it is impossible to evaluate the merits of the numbers discussed in the affidavit. For example, if the market for power strips were 20 million units per year, than under ½ million units would be deemed more significant. If this product line merely replaced an existing product line then the sales of the prior product line should be identified to determine if an increase in sales occurred. Also deficient is the information on what

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alternatives existed and what their sales numbers were, and how they were impacted when this product appeared. The assertion that a store stopped selling a competitor's products is not necessarily an indication that this applicant's product improvement was the reason. Perhaps the competitor and the store had other problems.

Applicant indicates the product line was promptly copied by a competitor at line 29. The statement is not persuasive, applicant identified its competitor's product as disclosed in Dwight. Dwight is prior art to this application. One cannot show coping using references that predate ones own invention. Instead this appears to show that both companies believed that this was a marketable concept and both were working on designs in this field. It is noted that the 131(a) affidavit of Noel LEE indicated that conception of color-coded power strip was to have occurred in 1993 but it was not reduced to practice until 1997. It is unclear if applicant is attempting to prove either derivation or to disqualify the Dwight reference. To prove prior invention one must prove conception prior to the prior art's effective date and must prove diligence. The only proof offered in this affidavit is a copy of a drawing signed by Mr. Pitcher in 1994. MPEP 715.07 states that "the essential thing to be shown under 37 CFR 1.131 is priority of invention and this may be done by any satisfactory evidence of fact." The drawing signed by Mr. Pitcher is not evidence of conception by Noel Lee. Nor is evidence provide regarding diligence to reduce this invention to practice. This affidavit is therefore ineffective to predate the Dwight reference. As to whether Mr. Pitcher derived his invention from Noel Lee's work product is likewise unsupported by evidence of fact. Please note that derivation is proper in a 132 affidavit not in a 131 affidavit, but the issue will be address here.

The Examiner's prior art of record teaches a color power strip and a color coded process for identifying a cord plug interface. The Applicant argues that his color coded plug strip is substantially more prominent to the eye than the cited art color rings or strips. The applicant further argues that his invention has more flexibility than does the prior art teachings. The Examiner maintains his rejection because the invention is obvious in view of the teaching of the prior art.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 49, 52, 56, 57, 58-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over DWIGHT Des. 401,220 in view of BARNA 5,775,935.

Regarding claims 49, 56, 58-62.

DWIGHT discloses a design patent disclosing a power strip housing having a plurality of colored areas (different hatching indicating different colors).

DWIGHT does not teach the colored areas are for selectively identifying each outlet of said power distribution outlets.

BARNA discloses system and method using a color coded tag to tag a power cable (column 5, lines 26-45) of a device wherein the color of the power cord connection cable corresponds with the color of the color coded alignment strip (column 5, lines 15-



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17) and that the colors located near or proximate to the connection port aids a user in determining which cable should be connected with the corresponding connection port (column 5, lines 60-62).

It would have been obvious to one having ordinary skill in the art at the time of this invention to tag a power cord with the corresponding color of the power outlet on the power strip disclosed by DWIGHT. The motivation would be to provide an indication as to which device is not plugged into the power strip (column 6, lines 27, 28).

Regarding claim 52.

DWIGHT in view of BARNA disclose the AC power distribution system as recited in claim 49.

DWIGHT discloses wherein the power strip includes at least one telephone jack (figure 7).

Regarding claim 57.

DWIGHT in view of BARNA disclose the AC power distribution system as recited in claim 49.

BARNA discloses color cords having colors corresponding to the colors of said color areas (column 5, lines 2-18).

Claims 50, 51, 54, 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over DWIGHT Des. 401,220 in view of BARNA 5,775,935 in further view of LINER 5,708,554.

Regarding claims 50, 51.

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DWIGHT in view of BARNA disclose the AC power distribution system as recited in claim 49.

DWIGHT in view of BARNA does not disclose an outlet of greater size than each of substantially identical AC power distribution outlets.

LINER discloses a power outlet box having an oversized outlet in that it is spaced from other outlets to allow an over size plug to be inserted (column 1, lines 34-38).

It would have been obvious to one having ordinary skill in the art at the time of this invention to modify the power strip to include an oversized outlet. The motivation would be to insert an oversized plug into the power strip.

Regarding claim 54.

LINER discloses main power switch 18 used for turning power on and off to the power outlet box.

Regarding claim 55.

LINER discloses indicator light L1.

Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over DWIGHT Des. 401,220 in view of BARNA 5,775,935 in further view of CRANE 5,899,761.

Regarding claim 53.

DWIGHT in view of BARNA disclose the AC power distribution system as recited in claim 49.

DWIGHT in view of BARNA does not disclose at least one coaxial cable jack.

CRANE discloses a power strip including coaxial plug 72.

It would have been obvious to one having ordinary skill in the art at the time of this invention to modify the power strip disclosed by DWIGHT in view of BARNA to include at least one coaxial cable jack. The motivation would be to provide at least one coaxial line interface.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication should be directed to Robert L. DeBeradinis whose number is (571) 272-2049. The Examiner can normally be reached Monday-Friday from 8:30 am to 5:00 pm.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Brian Sircus, can be reached on (571) 272-2058. The Fax phone number for this Group is (703) 872-9306.

RLD

MAY 25, 2005



**ROBERT L. DEBERADNIS**  
**PRIMARY EXAMINER**